



REPUBLIC OF KENYA



KENYA LAW
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**Chege v Republic (Criminal Revision E003 of 2023)
[2023] KEHC 2528 (KLR) (24 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2528 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CRIMINAL REVISION E003 OF 2023
GL NZIOKA, J
MARCH 24, 2023**

BETWEEN

JOSEPH MWANGI CHEGE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was arraigned before the Senior Principal Magistrate's Court at Engineer charged vide Criminal Case No E1285 of 2022, with the offence of assault causing actual bodily harm contrary to section 251 of the *Penal Code*. The particulars of the charge are as per the charge sheet.
2. He pleaded guilty, was convicted and sentenced him to a term of three (3) years imprisonment. He now seeks for review of the sentence through his application herein filed on January 5, 2023.
3. The application is supported by his affidavit and a document labelled 'memorandum of revision'. He avers that he pleaded guilty and is a first offender. That he is remorseful, has learnt to be a law abiding citizen and will never repeat the offence. Further, he is from poor family background. Furthermore, he has no pending appeal and is only applying for review of sentence.
4. The Respondent did not respond to the application despite being granted an opportunity to do so and therefore the application is unopposed.
5. The court ordered for and the Probation Department filed a social inquiry report dated, March 3, 2023, which indicates that the applicant's father is deceased while his mother is a peasant farmer. That, he is 47 years old and the 6th of twelve (12) siblings, though one sibling is deceased. He is not married and does not have any children. That he finished his primary school but did not proceeded to secondary school due to financial constraints after the death of his father and was doing casual jobs and farming before his arrest.



6. That he is remorseful and has learnt his lesson and vows to be a law abiding citizen. That the sister is the complainant herein. However, the views of his family including the complainant are not captured in the report, as the applicant stated he could not remember their contacts. Further, the area chief states that he does not know the applicant well as he was not from the area.
7. The report further indicates that despite being in prison for six (6) months he is yet to register for any vocation training and he works as a cleaner. The probation officer recommends the applicant be considered for favourable review.
8. However, I note the Probation Department had filed an earlier report dated September 28, 2022, in the trial court which differs from the current report in that, it indicates the applicant's family members were interviewed and revealed that, the applicant started acting violently at the age of 22 years and attempted to attack every member of the family who lived in the mother's compound. Further, he attacked his father before his death and was arraigned in Nyahururu Law Courts where he was given a probationary sentence.
9. That his family strongly opposed a non-custodial sentence as they were concerned over their safety as they would be forced to find an alternative place to stay if he were released. That the applicant was taken to Gilgil Mental Hospital where the examination revealed he has good mental health.
10. The complainant was also opposed to a non-custodial sentence as the applicant attacked her with a knife that resulted in her getting three stitches to her skull and one stitch each on her ear, hand and palm and which injuries prevent her from working.
11. Furthermore, the local administration opposed his release on a non-custodial sentence as he is a danger to the community, and even threatened children and everyone is afraid of him. That, the applicant has been subjected to mob justice on two occasions. The Probation officer's concluded that the applicant was not suitable for non-custodial sentence
12. I have considered the application in the light of the material before court and I note that, the law that guides the revisionary power of the High Court is provided for under sections 362 of the *Criminal Procedure Code* (herein 'the Code'), which states as follows:

' The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.'
13. However, the section should be read together with section 364 of the Code which provision states as follow: -

' (1) In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may—

 - (a) In the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence;
 - (b) In the case of any other order other than an order of acquittal, alter or reverse the order.



- (2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence: Provided that this subsection shall not apply to an order made where a subordinate court has failed to pass a sentence which it was required to pass under the written law creating the offence concerned.
- (3) Where the sentence dealt with under this section has been passed by a subordinate court, the High Court shall not inflict a greater punishment for the offence which in the opinion of the High Court the accused has committed than might have been inflicted by the court which imposed the sentence.
- (4) Nothing in this section shall be deemed to authorize the High Court to convert a finding of acquittal into one of conviction.
- (5) When an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.'

14. It is therefore clear from the above provisions that, the court will only exercise its revisionary powers where, the impugned sentence is either incorrect, illegal or improper. Thus the objective of revisionary jurisdiction is to set right a patent defect or error of jurisdiction or law. This jurisdiction will only be invoked where the decision under challenge is; grossly onerous, there is no compliance with the provisions of the law, or the finding re-ordered are based on no evidence, or material evidence is ignored or judicial discretion is exercised arbitrarily or perversely.

15. The applicant was convicted of the offence under section 251 of the Penal Code that states: -

' Any person who commits an assault occasioning actual bodily harm is guilty of a misdemeanour and is liable to imprisonment for five years'.

16. The applicant was sentenced to three years' imprisonment term which is lawful and legal. The probation report filed by Mr Ebongon Lomongin, the Probation officer recommending a favourable review of sentence is dismissed as lacking material facts and in particular failure to consider the pre-sentence report in the trial court.

17. In conclusion I find and hold that, in view of the fact that the sentence of three (3) years is lawful and that the applicant is not a first offender and further the report from the Probation Department is negative, the application for sentence review is dismissed for want of merit.

18. It is so ordered

DATED, DELIVERED AND SIGNED ON THIS 24TH DAY OF MARCH, 2023

GRACE L NZIOKA

JUDGE

In the presence of:

Appellant present in person, in court virtually

Mr. Atika for the Respondent

Ms Ogutu: Court Assistant

